HB 782
HD2, SD1

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 782, H.D. 2, S.D. 1

April 7, 2011

RELATING TO THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

House Bill No. 782, H.D. 2, S.D. 1, establishes the Department of Business, Economic Development and Tourism Operation special fund and assesses a $20 surcharge in addition to the various fees charged by the: Department of Commerce and Consumer Affairs; Public Utilities Commission; Department of Labor and Industrial Relations; and the Department of Taxation, and deposits the proceeds of the surcharge into the newly created operation special fund from July 1, 2011 through June 30, 2015.

The department recognizes the benefit of user fees to offset operational expenses and costs. As a matter of general policy, the Department of Budget and Finance expects the creation of any special fund would meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining.

SUBJECT: MISCELLANEOUS, Surcharge fee on certain services

BILL NUMBER: HB 782, SD-1

INTRODUCED BY: Senate Committee on Economic Development and Technology

BRIEF SUMMARY: Adds a new section to HRS chapter 92 to provide that between July 1, 2011 and June 30, 2015, a surcharge of $20 shall be added to every fee charged by: (1) the department of commerce and consumer affairs for the: (a) application, issuance, renewal, or reissuance of a license, permit, or other authorization for a profession, business, or occupation; (b) examination or audit of a person engaged in a profession, business, or occupation; (c) filing, registration, or renewal of a corporate or other business document; (d) application for or registration of a trade name, trademark, or service mark; or (e) tax on insurance premiums; (2) the public utilities commission pertaining to the regulation of a public utility or the filing of any document; except a telecommunications carrier that is the carrier of last resort; (3) the department of labor and industrial relations pertaining to the regulation of a hoisting machine operator, blaster or pyrotechnics operator, safety and health professional, boiler installer or installation, and elevator mechanic or installation; and (4) the department of taxation for the application, issuance, renewal, or reissuance of a license, permit, certificate, or other authorization required under the following taxes: (a) general excise; (b) transient accommodations; (c) rental motor vehicle and tour vehicle; (d) liquor; (e) cigarette and tobacco; (f) liquid fuel; (g) public service company; and (h) banks and financial corporations.

Defines "fee" for purposes of the measure.

No surcharge shall be added to: (1) any service for which no fee is charged; (2) any fine for a violation of a state law; (3) any fee for the dissemination or copying of a public record; or (4) any fee charged to a state, county, or federal agency.

Adds a new section to HRS chapter 201 to establish the department of business, economic development and tourism (DBEDT) special fund between July 1, 2011 and June 30, 2015. Moneys in the special fund shall be expended for the operations of the department, including the salary and fringe benefit costs of department personnel. Transfers any unexpended and unencumbered moneys remaining in the special fund on July 1, 2015 to the general fund.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: This measure proposes to impose a surcharge of $20 on certain fees assessed by the department of commerce and consumer affairs, public utilities commission, department of labor and industrial relations and department of taxation. The proceeds of the surcharge shall be deposited into a DBEDT special fund which shall be used to for the operations of DBEDT including salary and fringe benefit costs of its employees. While the measure proposes that revenues from the DBEDT special fund shall be used to pay for the operation of DBEDT, it is questionable whether the special fund would be the only source of funding for DBEDT as there is no provision to disconnect DBEDT from receiving funds from the state budgetary process. If the special fund is the sole source of funding for DBEDT, and if the revenues from the surcharge are insufficient, there is no doubt the surcharge amount will have to be increased to provide adequate funds to operate DBEDT resulting in an indirect "tax increase" to taxpayers.

It should also be noted that the proposed measure would add another special fund to the numerous other special funds. It should also be remembered that the State Auditor's report on special funds noted that: "Special funds give agencies full control of these unappropriated cash reserves, provide a way to skirt the general fund expenditure ceiling, and over time erode the general fund. Many experts say that special funds are likely to hamper budget administration. And from a legislative perspective, they are less desirable because they are not fully controlled by the appropriation process."

Given the findings of the Auditor and the current financial crisis, it is quite clear that the creation of numerous special funds has eroded the integrity of state finances. It should be remembered that moneys in special funds are neither subject to the general fund expenditure limitation nor to the close scrutiny that general funds are subject to in the budgeting process. The use of special funds which fly under the radar will inevitably lead to a call for tax increases even though money abounds in these special funds. One only has to review the measures introduced each year which set up numerous new special funds or add new fees or charges the receipts of which are earmarked for special funds, to see the prolific establishment of special funds. Rather than create another special fund which will allow DBEDT to operate without financial scrutiny, lawmakers should repeal the numerous special funds and require these programs to compete for general funds like all other programs.

Although conjecture, it would appear that the rationale behind this measure is that all of the fees targeted for the surcharge are fees paid by businesses in the state and that somehow these businesses should give a little more to support the department that oversees the development of the business community and the economy as a whole. That is the kind of logic that leads policymakers to believe that taxes can be raised on businesses much as the counties impose higher real property tax rates on non-residential properties while lowering the rates on residential properties. Unfortunately, that added burden on business must be passed on to the customers of those businesses, customers who are consumers of the goods and services those businesses sell. Thus, this proposal represents nothing more than an indirect tax increase on all consumers/taxpayers in the state as well as outside the state for those businesses who export their goods and services.

If lawmakers lack the funds and truly can't fund the department, then raise the income tax so that at least taxpayers know that they are being taken to the cleaners. Hiding a revenue increase in fees paid by businesses is less than honest.

Digested 3/29/11

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April 7, 2011

Senator David Y. Ige, Chair,
and members of the Senate Committee on Ways and Means
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 782, HD 2, SD 1 (Department of Business, Economic Development, and Tourism)**
<u>Hearing Date/Time: Thursday, April 7, 2011, 9:30 A.M.</u>

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **opposes** this Bill as drafted.

This Bill: (1) Establishes the department of business, economic development, and tourism operation special fund to support operations; and (2) Imposes a temporary surcharge on certain fees charged by certain departments for deposit into the fund.

The $20 fee surcharge mandated under Section 2 of this Bill will have a negative impact on companies that are examined or audited by the Division of Financial Institutions ("DFI") of the Department of Commerce & Consumer Affairs. On page 2, line 21 of this Bill, a $20 surcharge would be imposed on the examination fee that financial institutions (such as financial services loan companies and state chartered banks) pay to the DFI. Under HRS Chapter 412 (Code of Financial Institutions), the current examination fee is $40 per hour. The $20 surcharge would result in an examination fee of $60 per hour. This would be a 50% increase in these hourly fees which already cost financial institutions tens of thousands of dollars annually.

We ask that you do <u>not</u> pass this bill as drafted because any surcharges on the hourly examination or audit fees will be detrimental to Hawaii financial institutions which need to maintain capital levels and add to reserves.

Thank you for considering our comments.

Marvin S.C. Dang
MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)